United Nations A/62/782

General Assembly

Distr.: General
3 April 2008

Original: English

Sixty-second session
Agenda items 128 and 137

Programme budget for the biennium 2008-2009

Administration of justice at the United Nations

Administration of justice

Report of the Secretary-General

Summary

The General Assembly, by its resolution 62/228, established the basic framework of the new system of administration of justice at the United Nations and requested further information on a number of issues. The present report provides further information and recommendations, as requested by the General Assembly for consideration at the second part of its resumed sixty-second session. A number of the items requested have been elaborated in the draft statutes of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, which are attached to the present report as annexes I and II. The report includes additional information on categories of non-staff personnel, and provides further details on the functioning of the formal part of the system, encompassing the United Nations Dispute Tribunal and the United Nations Appeals Tribunal. It also discusses transitional measures, including resource implications, which will be required for the Organization to shift smoothly from the current internal justice system to the new system, which should be in place by 1 January 2009. The information contained in the report and the draft statutes incorporate input provided by representatives of the staff consulted through the contact group on the administration of justice, which was established at the twenty-eighth session of the Staff-Management Coordination Committee. The General Assembly is requested to adopt the draft statutes of the Dispute Tribunal and the Appeals Tribunal, and to approve the proposed transitional measures and the related resources for the biennium 2008-2009 in the amount of $1,729,100.

08-29509 (E) 050508

Contents

		Paragraphs	Page
I.	Introduction	1–4	3
II.	Scope of the new system of administration of justice	5–57	3
	A. Proposed scope of the new system	6	4
	B. Issues relating to non-staff personnel	7–42	4
	C. Mechanisms available to all categories of staff serving in the United Nations	43–49	11
	D. Alternative dispute resolution mechanisms for non-staff personnel	50–57	12
III.	Jurisdiction and functions of the formal system	58–81	13
	A. Jurisdiction of the United Nations Dispute Tribunal	59–60	13
	B. Grounds of appeal before the Appeals Tribunal	61–64	13
	C. Circumstances when a question would be decided by a panel of three Dispute Tribunal judges	65–70	14
	D. Conditions under which the Dispute Tribunal can refer pending cases to mediation	71–72	16
	E. Allocation of cases to the Dispute Tribunal	73–75	16
	F. Compensation	76–79	17
	G. The role of staff associations vis-à-vis the formal system of justice	80–81	18
IV.	Transitional measures	82–95	18
	A. Transition from the United Nations Administrative Tribunal to the United Nations Appeals Tribunal	83–92	19
	B. The final year of the United Nations Administrative Tribunal	93–95	21
V.	Financial implications	96–97	21
VI.	Conclusion	98–100	23
VII.	Actions to be taken by the General Assembly	101	23
Annexes			
I.	Draft statute of the United Nations Dispute Tribunal		25
II.	Draft statute of the United Nations Appeals Tribunal		31

I. Introduction

1. In its resolution 61/261, the General Assembly decided to establish a new, independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice to be implemented no later than January 2009. The Secretary-General provided additional details on the proposed new system in his report on the administration of justice (A/62/294), which also included detailed financial implications. During the sixty-second session of the General Assembly, both the Fifth and the Sixth Committees considered that report, with the Sixth Committee focusing on the legal aspects of the new system.

2. The General Assembly, by its decision 62/519, requested the Secretary-General to respond to the requests for further information contained in the conclusions issued by the Sixth Committee (A/C.5/62/11, annex, appendix I). The Secretary-General responded to those requests in a separate report (A/62/748 and Corr.1), to be considered by the Ad Hoc Committee on the Administration of Justice at the United Nations from 10 to 24 April 2008.

3. The General Assembly, by its resolution 62/228, established the basic framework of the new system of administration of justice and requested further information on several issues. The present report provides greater information and recommendation, as requested by the Assembly for consideration at the second part of its resumed sixty-second session. A number of the items on which the Secretary-General was requested to report have been included in the draft statutes of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, which were specifically mentioned by the Assembly in the resolution.

4. The Secretary-General will respond to other requests contained in resolution 62/228 in his report to the General Assembly at its sixty-third session on the administration of justice, including on issues related to the Office of Staff Legal Assistance (para. 19); measures taken to address systemic issues (para. 32); terms of reference for the Registries (para. 48) and revised terms of reference for the Ombudsman (para. 67 (a)); possible options for delegation of authority for disciplinary measures (para. 49); cost-sharing arrangements (para. 67 (b)); mechanisms for the formal removal of judges (para. 67 (c)); and how information and communications technology can improve the system of administration of justice (para. 71).

II. Scope of the new system of administration of justice

5. In its resolution 62/228, the General Assembly requested further information on the scope of the new system of administration of justice (para. 8). It further requested information as to the categories of non-staff personnel, the dispute resolution mechanisms available to them and any other mechanism that could provide "effective and efficient dispute settlement" to those categories of non-staff personnel (para. 66).

A. Proposed scope of the new system

6. The scope of the United Nations Dispute Tribunal is set out in article 3 of the draft statute (see annex I). Article 3 identifies the following persons as having a right to file an application before the Dispute Tribunal:

(a) Staff members of the United Nations, including its separately administered funds and programmes;

(b) Former staff members of the United Nations, including its separately administered funds and programmes;

(c) Any person making a claim in the name of an incapacitated or deceased staff member of the United Nations, including its separately administered funds and programmes;

(d) Any person performing work by his or her own personal service for the United Nations Secretariat or separately administered funds and programmes, regardless of the type of contract, with the exception of the following:

(i) Military or police personnel in peacekeeping operations;

(ii) Volunteers (other than United Nations Volunteers);

(iii) Interns;

(iv) Type II gratis personnel;

(v) Persons performing work in conjunction with the supply of goods or services extending beyond their own personal service or pursuant to a contract entered into with a supplier, contractor or consulting firm;

(e) A staff association recognized under United Nations staff regulation 8.1 (b).

B. Issues relating to non-staff personnel

7. In its resolution 62/228, the General Assembly requested that the Secretary-General provide information on: (a) the categories of non-staff personnel; (b) the dispute resolution mechanisms available to them; and (c) the types of grievances made by those categories of staff and the applicable bodies of law (para. 66 (a), (b) and (c)). Subsections 1 to 5 below address those questions for each category of non-staff personnel.

1. Consultants and individual contractors

(a) Description of category

8. The roles of consultants and individual contractors are set out in section 1 of administrative instruction ST/AI/1999/7, as follows:

(a) A consultant is an individual who is a recognized authority or specialist in a specific field, engaged by the United Nations under temporary contract in an advisory or consultative capacity to the Secretariat;

(b) An individual contractor is an individual engaged by the Organization from time to time under temporary contract to provide expertise, skills or

knowledge for the performance of a specific task or piece of work against payment of an all-inclusive fee.

9. Consultants must not perform the functions of staff members or have any representative or supervisory responsibility. They are neither "staff members" under the Staff Regulations and Rules of the United Nations nor "officials for the purposes of the Convention on the Privileges and Immunities of the United Nations". However, consultants and individual contractors may be given the status of "experts on mission" under section 22 of the Convention.

10. Consultants and individual contractors are engaged under contracts, the terms and conditions of which are set out in annex A to administrative instruction ST/AI/1999/7. The terms and conditions of service of personnel under service contracts and special service agreements (used by some of the funds and programmes) are also stipulated in their respective contracts and the applicable conditions of service or general conditions.

(b) Dispute settlement mechanisms

11. Under the General Conditions of Contracts for the Services of Consultants or Individual Contractors (see ST/AI/1999/7/Amend.1, annex), disputes arising out of the contractual terms of consultants and individual contractors are first addressed through amicable settlement efforts, including conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law (UNCITRAL). Should the dispute not be resolved through those means, either party may refer the matter to arbitration under the UNCITRAL Arbitration Rules.[1] The same is true for individuals engaged under service contracts (used by some of the funds and programmes).

12. The majority of disputes involving consultants, individual contractors and individuals engaged under service contracts can be settled amicably at the initial informal phase.

13. Conciliation is rarely used as a means of redress by either party. This may be a result of the fact that conciliation is not binding on the parties, leading to the perception that the process adds little value.

14. Arbitration is initiated as a last resort when settlement negotiations fail. Very few disputes escalate to that level. From 1996 to 2006, 16 claims by consultants or individual contractors were referred to the Office of Legal Affairs, of which only two proceeded to arbitration (see A/62/294, para. 20).

15. There have been instances in which consultants and individual contractors have filed lawsuits directly with national courts. Where such cases are filed in consultation with the Office of Legal Affairs, the Organization requests that the local authorities assert the immunity of the Organization to have such cases dismissed, pointing out that there is adequate recourse through the dispute resolution mechanisms articulated in the contract (i.e., conciliation and arbitration under UNCITRAL rules).

[1] For background information regarding the use of ad hoc arbitration as the mode of resolving disputes of this nature, see A/62/294, paras. 19 and 20.

16. Consultants, individual contractors and individuals under service contracts may also file complaints of workplace harassment, sexual harassment or abuse of authority against staff members. The Organization's policy on protection against retaliation permits non-staff personnel to report allegations of retaliation on the part of staff members (see ST/SGB/2005/21). Reports are addressed under the Organization's established rules and procedures.

17. Non-staff personnel, including consultants, individual contractors and individuals under service contracts, may also seek the services of the Office of the Ombudsman which has, in a number of instances, assisted the parties in reaching mutually acceptable solutions.

(c) Types of grievances and applicable bodies of law

18. Consultants and individual contractors, as well as individuals under service contracts, raise a diverse range of grievances. These include the non-renewal or termination of contracts and a variety of entitlement-related claims. The grievances raised in the 16 arbitral claims by consultants and individual contractors between 1996 and 2006 concerned issues relating to one or more of the following: (a) claims for alleged non-payment of fees under the contracts; (b) claims that consultants and individual contractors should be provided with the same terms and conditions of employment as United Nations staff members; and (c) claims relating to termination or non-extension of contracts.

19. Under their contracts, consultants and individual contractors are required to follow certain standards of conduct in connection with their service. The United Nations can terminate the service of these individuals based upon either unsatisfactory performance or failure to comply with the required standards of conduct (see sect. 5.16 of ST/AI/1999/7 and the General Conditions). The United Nations can also refer any alleged breach of the standards of conduct to the relevant national authorities for appropriate legal action.

20. The Organization reviews arbitral claims in the light of the applicable contractual terms as well as general principles of international law. The General Conditions do not include a choice of law provision because, as the United Nations is an intergovernmental Organization with 192 Member States, its contracts and agreements should not be subject to the laws of any one jurisdiction, but should respect general principles of international law. The General Conditions do state, however, that the "decisions of the arbitral tribunal shall be based on general principles of international commercial law".

21. Individuals engaged under service contracts are required to uphold the standards of conduct set forth in their contracts. Additionally, some are required to uphold the standards set out in the Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission (see ST/SGB/2002/9). Under the service contract, improper conduct by the service contract holder can result in termination. Pursuant to their contracts, holders of special service agreements are required to abide by the standards of conduct set forth in ST/SGB/2003/13 and ST/SGB/2002/9.

2. United Nations Volunteers

(a) Description of category

22. United Nations Volunteers are individuals who work with United Nations agencies and governmental and non-governmental organizations on a voluntary and short-term basis. They are engaged pursuant to the Conditions of Service for International United Nations Volunteers and are not staff members.

23. United Nations Volunteers do not receive salaries but do receive benefits in connection with their assignment, including a monthly volunteer living allowance; annual leave entitlements; travel expenses; insurance coverage; and settling-in and resettlement grants.

(b) Dispute settlement mechanisms

24. United Nations Volunteers may appeal an administrative decision to the United Nations Volunteers Executive Coordinator and, subsequently, to the Administrator of the United Nations Development Programme (UNDP). If a volunteer wishes to contest the Administrator's decision concerning his or her appeal, the matter is sent to arbitration conducted under the UNCITRAL Arbitration Rules (see paras. 11 and 15 above). Volunteers may also seek informal mediation and resolution of matters that are relayed through the Office of the Joint Ombudsman to United Nations Volunteers Headquarters.[2]

25. United Nations Volunteers may also file complaints of workplace harassment, sexual harassment or abuse of authority against staff members. UNDP policy on protection against retaliation also permits United Nations Volunteers to report allegations of retaliation on the part of staff members. Such reports are then addressed under the established rules and procedures of UNDP.

(c) Types of grievances and applicable bodies of law

26. The two broad categories of grievances received from United Nations Volunteers relate to administrative decisions on volunteer conditions of service and misconduct. The relevant body of law is the Conditions of Service for International United Nations Volunteers. General principles of international law would also be considered in any claim referred to arbitration (see para. 20 above).

3. Officials other than Secretariat officials

(a) Description of category

27. "Officials other than Secretariat officials" are persons who, at the directive of the legislative organs, perform specific functions for the Organization on a substantially full-time basis. "Officials other than Secretariat officials" are appointed by the legislative organs rather than by the Secretary-General. They are not staff members but have the status of "officials" of the Organization under articles V and VII of the Convention on the Privileges and Immunities of the United Nations (the General Convention), and are accorded privileges and immunities thereunder. The following persons are recognized by the General Assembly as

[2] See appendix XVI of the Conditions of Service for International United Nations Volunteers, available from the United Nations Volunteers website.

"officials" under the General Convention, and are paid a remuneration fixed by the General Assembly:

- The Chairman of the Advisory Committee on Administrative and Budgetary Questions
- The Chairman and the Vice-Chairman of the International Civil Service Commission
- Inspectors of the Joint Inspection Unit (11 members)[3]

(b) Dispute settlement mechanisms

28. The Secretary-General issues periodic reports on the conditions of service and compensation of some of those officials for the approval of the General Assembly. However, since the officials are appointed by the legislative organs, the Secretary-General is not privy to the detailed terms of engagement governing their service, including any provision concerning settlement of disputes.

29. "Officials other than Secretariat officials" are accountable to the Organization for the proper discharge of their functions.[4] As the terms and conditions of service of "officials other than Secretariat officials", including the recourse mechanism or procedure, are established by the appointing bodies, those bodies would establish any recourse mechanism or procedure applicable to those individuals. No established or specified recourse mechanism or procedure applicable to those officials is known, with one exception: the United Nations Administrative Tribunal has recognized the standing before the Tribunal of members of the Joint Inspection Unit who are "officials other than Secretariat officials",[5] at least in respect of the entitlements granted by the General Assembly to those officials.

(c) Types of grievances and applicable bodies of law

30. No records are maintained concerning the grievances raised by this category of non-staff personnel. The bodies of law relevant to claims by this category of personnel are contained in the terms and conditions of the appointment as established by the appointing authority and the Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission (see ST/SGB/2002/9).

4. Experts on mission

(a) Description of category

31. Individuals performing functions for the United Nations who are neither "officials" nor staff members may be accorded the status of "experts on mission" under section 22 of the General Convention. "Experts on mission" may be issued

---

[3] See article 13 of the statute of the Joint Inspection Unit, which provides that "inspectors shall have the status of officials of the United Nations. They shall not be considered to be staff members."

[4] See regulation 3 on accountability in the Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission, contained in Secretary-General's bulletin ST/SGB/2002/9 of 18 June 2002. See also the commentary to Regulation 3.

[5] See Judgement No. 1074 (2002), *Hernandez-Sanchez*.

either a service contract or a contract for consultants and individual contractors, both of which set out the conditions of service and the assigned tasks. Consultants and individual contractors may be given the status of "experts on mission" if they are designated by United Nations organs to carry out missions or functions for the United Nations (see ST/AI/1999/7/Amend.1, annex). While experts on mission are not staff members, they are also accorded privileges and immunities under articles VI and VII of the General Convention.

32. The information on experts on mission provided in paragraphs 33 to 36 below relates to the following experts, who do not serve under a contract as a consultant or individual contractor:

- International Law Commission (34 members)
- Advisory Committee on Administrative and Budgetary Questions (other than the Chairman) (15 members)
- International Civil Service Commission (other than the Chairman and Vice-Chairman) (13 members)
- International Narcotics Control Board (13 members)
- Special rapporteurs, independent experts and special representatives appointed under mandates of the Commission on Human Rights which were subsequently assumed by the Human Rights Council (34)
- Committee on Contributions (18 members)
- Military observers and civilian police personnel in peacekeeping missions (12,121 as at 31 December 2007)
- Experts appointed by the Committee on the Elimination of Discrimination against Women who carry out advisory missions in their personal capacity.

33. The General Assembly, by its resolution 56/272, decided to set at a level of $1 per year all honorariums currently payable on an exceptional basis to the members of the International Law Commission, the International Narcotics Control Board, the United Nations Administrative Tribunal, the Human Rights Committee, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child. This de minimis amount would not be considered to constitute remuneration and thus these "experts on mission" are not appointed to a remunerated post and would not be included in the scope of the new justice system.

(b) Dispute settlement mechanisms

34. "Experts on mission" holding consultant contracts may avail themselves of the dispute settlement clause provided for in the contract (see para. 31 above). Otherwise, there are no known established or specified recourse mechanisms or procedures applicable to experts on mission. The terms and conditions of service of other experts on mission, including any recourse mechanism or procedure, are established by the appointing body.

35. Experts on mission remain accountable to the Organization for the proper discharge of their functions. However, in certain cases (United Nations police, formed police units and United Nations military observers), these individuals remain under the jurisdiction of their own country. Therefore, while the

Organization's disciplinary directives apply to them, should they violate the applicable standards of conduct, the Organization's range of actions is limited.

(c) Types of grievances and bodies of law applicable

36. No records are maintained concerning the grievances raised by this category of non-staff personnel. The relevant bodies of law are the terms and conditions of the appointment as established by the appointing body and the Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission (see ST/SGB/2002/9).

5. Daily paid workers

(a) Description of category

37. Daily paid workers were initially engaged in some peacekeeping missions for occasional work (unloading boats, trucks and so forth). This practice has been extended informally to include work that needs to be done on a continuing basis, particularly when outsourcing locally is not possible.

38. The Department of Field Support is working with the missions concerned to eliminate this practice by the end of 2008. To the extent that appropriate posts exist on the staffing table, daily paid workers performing skilled functions required on a continuing basis will be given regular staff contracts; those performing functions that are not required on a continuing basis will be engaged as individual contractors. Missions will explore the feasibility of outsourcing other work. To meet the needs of missions for occasional workers, the Department, together with the Office of Human Resources Management, will develop a contract for occasional workers to be used when there is an occasional need for the personal services of an individual on an hourly basis, not to exceed 40 hours per month. The contract will clearly specify the individual's status and coverage in the case of service-incurred injury or death. It will also include a provision on means of recourse.

39. In the event that the daily paid worker category of personnel is not completely eliminated by the end of 2008, support will be required from the General Assembly for approving posts requested by missions for continuing the functions being performed by daily paid workers or individual contractors. While outsourcing will continue to be explored as an option, the Department has indicated that it is often not possible or feasible to outsource in post-conflict environments.

(b) Dispute settlement mechanisms

40. Daily paid workers have no specific, established recourse mechanism. They are made aware of United Nations standards of conduct and, in particular, the code of conduct on sexual exploitation and abuse. They are made aware that they have the right to complain. The Department of Field Support will remind missions to establish special briefing sessions to better inform daily paid workers about their rights and access to complaint mechanisms.

41. The new contract being developed by the Office of Human Resources Management and the Department of Field Support for occasional workers would address this issue by including a provision on means of recourse.

(c) Types of grievances and bodies of law applicable

42. The Department of Field Support maintains no records of the types and number of grievances raised by daily paid workers. In most cases, missions settle such grievances locally. However, there have been instances in which complaints raised by daily paid workers concerning alleged misconduct on the part of United Nations staff members have resulted in appropriate action being taken by the administration against those staff members. Such cases have included allegations of sexual exploitation and abuse, and abuse of authority and extortion. In those cases, action taken against United Nations personnel was in accordance with the Staff Regulations and Rules and relevant administrative issuances.

C. Mechanisms available to all categories of staff serving in the United Nations

1. Office of the Ombudsman (Secretariat)

43. The Office of the Ombudsman can consider any United Nations employment-related issue, regardless of the contractual arrangement or status of the person concerned.

44. The report of the Secretary-General on the activities of the Ombudsman (A/62/311) show the breakdown of cases brought to the Ombudsman by occupational category. The category "Other" includes national staff, former staff, retirees, interns, consultants and individual contractors. Excepting national staff, former staff and retirees from this category, the remaining group could be considered as non-staff personnel for the purpose of the present report.

45. From its inception until 31 December 2007, the Office of the Ombudsman dealt with 136 of 2,945 cases relating to this group of non-staff personnel.

2. Office of the Joint Ombudsperson (funds and programmes)

46. The terms of reference of the Office of the Joint Ombudsperson provide that the services of the Ombudsperson are available to staff members and holders of contracts from UNDP, the United Nations Population Fund, the United Nations Children's Fund and the United Nations Office for Project Services and related subprogrammes who are on active duty. Non-staff personnel, particularly those in the field, have sought the services of the Office. Categories of non-staff include service-contract holders, consultants (under special service agreements) and United Nations Volunteers

47. In 2006, 8 United Nations Volunteers, 17 consultants (under special service agreements) and 45 service-contract holders contacted the Joint Ombudsperson in connection with, inter alia, (a) interpersonal problems; (b) abuse of authority and violations of standards of conduct; (c) performance disagreements; (d) unfair termination; (e) working conditions; and (f) entitlement-related issues.

48. In a number of cases concerning non-staff personnel, the Office of the Joint Ombudsperson helped to bring about a mutually acceptable solution through mediation. Had the non-staff personnel been barred from access to the informal system, the only alternative would have been to proceed to arbitration. Many

non-staff personnel indicated their desire to explore all possible means in order to avoid lengthy and costly arbitral proceedings.

49. Cases resolved through mediation included cases relating to financial compensation for work completed, clarification of inappropriate behaviour, relationships involving evaluative authority and interpersonal problems.

D. Alternative dispute resolution mechanisms for non-staff personnel

50. The General Assembly requested further information and recommendations on any "other mechanism that could be envisaged to provide effective and efficient dispute settlement to the different categories of non-staff personnel, taking into account the nature of their contractual relationship with the Organization".[6]

51. The Secretary-General has in the past expressed the view that disputes involving non-staff personnel would be more effectively addressed if such personnel had access to the same justice system as staff members (A/62/294, para. 18). However, providing such access could present difficulties, particularly with regard to the ability of the formal system to address the various contractual terms and conditions of service relating to non-staff personnel. Therefore, separate formal dispute resolution mechanisms might be needed to deal effectively with the various bodies of law applicable to staff members and non-staff personnel.

52. The Secretary-General considers that any such formal system should provide less lengthy and complex procedures than those of the formal system established for staff members. These procedures should also take into account the contractual terms or conditions of service applicable to the individual concerned.

53. An internal standing body could be established which would have powers similar to those of the Dispute Tribunal and which would make binding decisions in disputes concerning non-staff personnel, using streamlined procedures. The decisions of the standing body would be final and not subject to appeal.

54. However, while the objective of the internal standing body would be to provide a simplified and expedited mechanism for the resolution of disputes involving non-staff personnel, it is possible that such a body would not be sufficiently different from the Dispute Tribunal and/or the Appeals Tribunal to justify the costs of its establishment.

55. Any such alternative mechanism for non-staff personnel should place substantial emphasis on the informal resolution of disputes, as this has proved to be a successful way of resolving disputes at an early stage. Therefore, it should provide non-staff personnel with full access to the new informal system of justice, including the Office of the Ombudsman and its Mediation Division.

56. In order to review the feasibility of establishing such an internal standing body, detailed proposals would have to be developed concerning, inter alia, the composition, powers, location, administrative and financial arrangements and resource requirements. Before developing further proposals in this regard, the

[6] Resolution 62/228, para. 66 (d). See also para. 4 (d) of the Sixth Committee conclusions (A/C.5/62/11, annex, appendix I).

Secretary-General will seek the guidance of the General Assembly as to whether the matter should be pursued.

57. A decision to extend the scope of the new internal justice system to those non-staff personnel appointed to a remunerated post would require specific approval by the Assembly or the principal organ concerned, as the appointing body (A/61/758, para. 11). Similar considerations would apply to the adoption of any proposed alternative dispute resolution mechanisms for those same individuals.

III. Jurisdiction and functions of the formal system

58. The General Assembly requested further information on a number of issues relating to the jurisdiction and functions of the new formal system (resolution 62/228, para. 65). The draft statutes of the Dispute Tribunal and the Appeals Tribunal are contained in annexes I and II, respectively, to the present report for the consideration of the General Assembly. Related issues for consideration by the Assembly are set out below.

A. Jurisdiction of the United Nations Dispute Tribunal

59. Article 2 of the draft statute of the Dispute Tribunal sets out the jurisdiction of the Tribunal. In summary, the Dispute Tribunal is competent to hear cases from those individuals identified under article 3 appealing any administrative decision alleged to be in non-compliance with the terms of appointment or conditions of employment or which imposes a disciplinary measure (art. 2(1)(a) and (b)).

60. Additionally, the Dispute Tribunal has jurisdiction to hear cases filed by a staff association to (a) enforce the rights of staff associations, as recognized under the Staff Regulations and Rules (art. 2(3)(a)); (b) to appeal an administrative decision alleged to be in non-compliance with the terms of appointment or conditions of employment on behalf of a group of staff affected by the same decision arising out of the same facts (art. 2(3)(b)); or (c) to support the application filed by an individual or group with standing before the Dispute Tribunal in the form of a friend-of-the-court brief or intervention (art. 2(3)(c)).

B. Grounds of appeal before the Appeals Tribunal

61. Article 2 of the draft statute of the Appeals Tribunal sets out the jurisdiction of the Tribunal. Principally, the Appeals Tribunal is a court of review with appellate jurisdiction. Under article 2(1) of the draft statute, the Appeals Tribunal is competent to hear appeals against judgements rendered by the Dispute Tribunal in cases where the appellant has asserted that the Dispute Tribunal has:

(a) Exceeded its jurisdiction or competence;

(b) Failed to exercise jurisdiction vested in it;

(c) Committed a fundamental error in procedure that has occasioned a failure of justice;

(d) Erred on either a question of law or a question of material fact.

62. Articles 2(4) and (5) of the draft statute reflect the Secretary-General's proposal that decisions taken by the Pension Fund and other organizations which currently may be challenged in the Administrative Tribunal would come under the jurisdiction of the new Appeals Tribunal, which would continue to act as an administrative tribunal for the Pension Fund and those organizations (see A/62/294, para. 152).

63. The General Assembly requested the Secretary-General "to consult with the organizations which currently participate in the United Nations Administrative Tribunal with the aim of providing for an orderly transition to another system of their choosing, if they were not to join the new system of administration of justice" (resolution 62/228, para. 60). The Secretary-General has reviewed those agreements and is engaged in ongoing consultations with those organizations.

64. A staff member may challenge a decision of the Pension Fund Board before the Administrative Tribunal.[7] Any decision by the General Assembly to change the existing arrangements would require the revision of the Regulations of the United Nations Joint Staff Pension Fund, which are adopted by the General Assembly.

C. Circumstances when a question would be decided by a panel of three Dispute Tribunal judges

65. The General Assembly requested that further consideration be given to the question of the circumstances in which the decision of a Dispute Tribunal would be made by single judge or a panel of three judges. The Assembly also requested that the Secretary-General make further proposals in this regard, including resource implications, for consideration at the second part of its resumed sixty-second session (see resolution 62/228, para. 43).

66. Article 10 of the draft statute provides that judgements by the Dispute Tribunal shall normally be rendered by a single judge, but that it may refer any case to a panel of three judges for a decision. The Secretary-General considers that to identify in the statute specific categories of cases to be considered by a panel of three judges would usurp the Dispute Tribunal's judicial authority. However, it is the Secretary-General's view that having a panel of three judges representing diverse legal traditions and practices, as well as cultural and linguistic backgrounds, would be particularly important in cases involving (a) a contested administrative decision relating to appointment, promotion or termination; (b) an allegation of harassment or discriminatory treatment supported by substantiated evidence; or (c) a situation where the potential exists for substantial financial damages for the Organization. Since the judiciary of the Dispute Tribunal includes two half-time judges, it is likely that there will be some practical and logistical difficulties, as well as travel costs, associated with assembling a panel of three judges to consider cases such as those identified above. For this reason, the General Assembly may wish to consider revisiting the issue of the total number of judges in the Dispute Tribunal at its sixty-fifth session, in the context of the comprehensive report on the system of administration of justice.

[7] See Regulations of the United Nations Joint Staff Pension Fund, article 48. This right is also set out in article 14(2) of the Statute of the Administrative Tribunal.

67. It is difficult to forecast the number of cases requiring the formation of a three-judge panel per Registry duty station with any accuracy. The historical caseloads of the Joint Appeals Boards and the Joint Disciplinary Committees in New York, Geneva and Nairobi and the Disciplinary Committee of the funds and programmes provide some guidance. Far more cases are filed with the Joint Appeals Board and the Joint Disciplinary Committee in New York than with those in Geneva and Nairobi or with the Disciplinary Committee of the funds and programmes. For example, over a three-year period (2005-2007), New York received, on average, 84 cases per year, compared with an average of 27 in Geneva, 10 in Nairobi, and 6 in the funds and programmes over the same period of time.

68. Assuming that the categories of cases identified in paragraph 66 above are appropriate for three-judge panels and that the distribution of cases among the duty stations would remain consistent, approximately 100 cases per year would require a three-judge panel, with approximately 67 being heard in New York, 18 in Geneva and 6 in Nairobi. The cases coming from the funds and programmes — approximately 9 — would be allocated to a Registry according to the duty station where the application was filed.

69. The new system provides for three full-time and two half-time judges, divided among the three duty stations with Dispute Tribunal Registries: New York, Geneva and Nairobi. There are practical and logistical challenges in assembling a panel of three judges. The financial implications of supporting the half-time judges and facilitating the operation of three-judge panels would principally involve the cost of travel between Registry duty stations. If the two half-time judges were to be located in different duty stations, it would be necessary for at least one of the half-time judges to travel for each case requiring a three-judge panel. More specifically, one judge would be required to travel from or to either Geneva or New York for about 100 cases, with two travelling for approximately 6 cases.

70. The Secretary-General considers that in order to facilitate the formation of three-judge panels, it would be more practical to have both half-time judges located at United Nations Headquarters in New York. This would require less travel, provided the majority of cases continue to be considered in New York, as has been the case historically. This would still require the two half-time judges to travel from New York to Geneva for an estimated 23 cases, and from New York to Nairobi for an estimated 7 cases. For practical purposes, the cases requiring a three-judge panel ruling could be grouped together for consideration during extended sessions. Provision would also have to be made for a limited number of cases in which the urgency of the situation dictated the need for a specific trip for adjudication, such as a case of summary dismissal. The Secretary-General therefore requests that the General Assembly approve funds for travel of two United Nations Dispute Tribunal judges in the amount of $97,000 for 2009, corresponding to three separate trips of 10 days from New York to Geneva to consider approximately 23 cases, and one trip of 10 days from New York to Nairobi to consider approximately 7 cases, and for up to four trips of shorter duration, as deemed necessary by the Dispute Tribunal, to handle urgent cases.

D. Conditions under which the Dispute Tribunal can refer pending cases to mediation

71. The General Assembly requested information on the conditions "under which the United Nations Dispute Tribunal may refer cases pending before it to mediation, including the requirement of the consent of the parties and the issue of time frames" (resolution 62/228, para. 65 (e)). The Secretary-General considers that decisions on whether a case pending before the Dispute Tribunal should be referred to mediation would depend on a variety of factors, including the likelihood of resolving the dispute through mediation and the appropriateness of having the dispute resolved through the informal system. The Secretary-General considers that it would not be desirable to enumerate an exhaustive list of such criteria, as this would unduly bind the discretion of the Dispute Tribunal judges.

72. While the consent of the parties to engage in mediation would facilitate the process, it will not be required as a precondition for the Dispute Tribunal to refer a case to mediation; however, a settlement arising out of mediation would not be valid unless both parties had consented to it. This approach is consistent with the practice of national jurisdictions that allow for mediation to be ordered by a court. The appropriate time frame would be established by the Dispute Tribunal judges at their own discretion.

E. Allocation of cases to the Dispute Tribunal

73. The General Assembly requested a "detailed proposal regarding the allocation of cases to the United Nations Dispute Tribunal, taking into account geographical accessibility, the type of cases and the number of cases" (resolution 62/228, para. 65(f)).

74. Preliminarily, the Secretary-General observes that, once appointed, the Dispute Tribunal judges will establish the rules of procedure and evidence under which the Tribunal will function. These rules of procedure and evidence would elaborate on how cases will be distributed among the Registries of the Dispute Tribunal.

75. Provisional arrangements may be made, without prejudice to the discretion of the Dispute Tribunal judges, to allocate cases differently until such rules of procedure and evidence are adopted. These provisional arrangements would be as follows:

(a) Staff members serving in the duty stations where a Registry of the Dispute Tribunal will be situated (New York, Geneva and Nairobi) will file their appeal at the corresponding Registry;

(b) Staff members serving in other duty stations will file their appeal at the Registry situated in the geographic region of the duty station where a Registry is situated;

(c) Staff members serving in a region where there will be no Registry (Asia) will file their appeal in New York.

F. Compensation

76. The General Assembly requested the Secretary-General to provide information on the issue of compensation awarded by the Tribunals and alternatives (resolution 62/228, para. 65 (g)).

77. The draft statutes of both the United Nations Dispute Tribunal and the United Nations Appeals Tribunal contain provisions concerning awards of compensation and costs. These provisions include the following:

(a) When the Tribunal finds that a case has been made out by the applicant, it can award compensation, interest and costs;[8]

(b) Compensation awards shall not normally exceed two years' net base salary, although in exceptional cases they may be higher, provided that the order is accompanied by a written explanation;[9]

(c) Costs may be awarded when the Tribunal determines that a party has manifestly abused the process;[10]

(d) Under limited circumstances, the Tribunal can order compensation to be paid when there has been a procedural delay;[11]

(e) The Tribunal may not order exemplary or punitive damages.[12]

78. The question remains as to the circumstances under which a compensation award by the Dispute Tribunal should be executed when there is an appeal pending. At issue is whether the awarded compensation should be paid pending completion of the appeal. There are several ways in which this issue could be addressed:

(a) The compensation award could be paid immediately and then recovered from the applicant should the Appeals Tribunal reverse the judgement of the Dispute Tribunal;

(b) Payment could be stayed pending judgement by the Appeals Tribunal. If the judgement of the Dispute Tribunal is affirmed, compensation would be paid, plus interest; or

(c) The amount awarded could be placed in an escrow account pending the completion of the appeals process. If the Appeals Tribunal affirms the judgement of the Dispute Tribunal, the compensation award would be paid, in addition to the accrued interest.

79. It should be borne in mind that, because any compensation award involves public money, there would be potential adverse consequences for the Organization if, as under option (a) in paragraph 78 above, the compensation were to be paid immediately even though an appeal was pending. The compensation paid could be

[8] See the draft statute of the United Nations Dispute Tribunal, art. 10(4)(b)-(d). This provision is echoed in the draft statute of the United Nations Appeals Tribunal, art. 9(1)(c)-(e).

[9] Ibid., art. 10(4)(b).

[10] Ibid., art. 10(5). This provision is echoed in the draft statute of the United Nations Appeals Tribunal, art. 9(2).

[11] Ibid., art. 10(3). This provision is echoed in the draft statute of the United Nations Appeals Tribunal, art. 9(5).

[12] Ibid., art. 10(6). This provision is echoed in the draft statute of the United Nations Appeals Tribunal, art. 9(3).

difficult to recover, particularly if the staff member had subsequently separated from service.[13] Accordingly, the Secretary-General believes that the best practice would be to place compensation awarded by the Dispute Tribunal into an escrow account pending any appeal, to be paid, plus the accrued interest, at such time that the Appeals Tribunal affirms the judgement. However, the Secretary-General considers that the Dispute Tribunal should also have the discretion to order the immediate payment of compensation, notwithstanding the filing of an appeal, where the applicant has established to the satisfaction of the Dispute Tribunal that undue hardship would result from any delay in the payment.

G. The role of staff associations vis-à-vis the formal system of justice

80. The General Assembly requested that the Secretary-General provide information as to the role of staff associations with regard to the formal system (resolution 62/228, para. 65 (h)). The draft statute of the United Nations Dispute Tribunal reflects the position of the Secretary-General set out in his note (A/61/758), supporting the recommendation of the Redesign Panel[14] that staff associations recognized under staff regulation 8.1(b) have an independent right to bring a class or representative action on behalf of their members against the United Nations or its separately administered funds and programmes in three distinct categories of cases. The categories are set out in the draft statute of the Dispute Tribunal (see annex I) and are listed in paragraph 60 above.

81. The Secretary-General calls the attention of the General Assembly to the fact that the subject of the composition and role of staff associations is also addressed in some detail in his note on the administration of justice (see A/62/748, para. 105).

IV. Transitional measures

82. The General Assembly, by its resolution 62/228, decided to revert to the issue of transitional arrangements at the second part of its resumed sixty-second session (para. 59). The Secretary-General's proposals concerning the transitional measures were set out in section VI of his report (A/62/294). The Secretary-General anticipated that the United Nations Appeals Tribunal would have a dual role, acting also as an administrative tribunal with respect to pending cases filed with the current Administrative Tribunal before it ceases to exist on 1 January 2009. Having further considered the scope of the transition required, and with the benefit of

[13] In cases where an applicant refuses to return compensation already paid voluntarily, the Organization may, in such situations, consider instituting a civil action in local court against the individuals concerned, seeking recovery of the compensation already paid. However, the Organization would, in most instances, choose not to resort to such action since the privileges and immunities of the Organization would have to be waived in order to commence and continue such action. In addition, commencement of such action would not guarantee that the local court would render a decision in the Organization's favour. Another important issue to bear in mind is that the institution of a civil action in such a context would be likely to result in conflicting legal interpretation of internal United Nations rules by outside judicial organs, which would have negative attendant consequences.

[14] See the report of the Redesign Panel on the United Nations system of administration of justice (A/61/205), paras. 77 (d), 82 and 160 and annex I, subpara. (b).

additional experience and information now available, the Secretary-General no longer considers that to be the most efficient and practical solution.

A. Transition from the United Nations Administrative Tribunal to the United Nations Appeals Tribunal

83. Despite the best efforts, it is inevitable that there will be a considerable backlog of cases filed before the United Nations Administrative Tribunal that will not have been disposed of by 31 December 2008. Not only are there a very large number of cases already pending, but cases will continue to be filed in the course of 2008, especially as the Joint Appeals Boards, the Joint Disciplinary Committees and the Disciplinary Committees are also expected to continue operations until the end of the year. Based on historical averages, and taking into account new cases expected in the course of 2008, it is projcctcd that there will be more than 130 cases pending before the United Nations Administrative Tribunal at the end of 2008.

84. The United Nations Appeals Tribunal is unlikely to be in any position to consider cases until the middle of 2009, as its first session would be devoted to deciding on rules of procedure and other organizational matters. If, at that point, the Appeals Tribunal were to be burdened with a caseload far in excess of 100 cases emanating from the old system, to be handled in accordance with the statute of the Administrative Tribunal, that would, in effect, greatly delay the introduction of the new system of administration of justice. That would clearly be undesirable.

85. The Secretary-General proposes instead that all applications filed with the Administrative Tribunal that are pending as at 31 December 2008 be transferred to the Dispute Tribunal as at 1 January 2009. To make this option feasible, the Secretary-General proposes, as a transitional measure, that the Dispute Tribunal be strengthened by three ad litem judges and support staff for 2009 with a view to clearing the backlog. As the Dispute Tribunal judges work full time, it would have a greater capacity to handle an expanded caseload. Another advantage is that the caseload could be divided among the three Dispute Tribunal locations. This proposal would enable the Appeals Tribunal to start with a clean slate, focusing on its proper role as an appeals instance.

86. The approval of the General Assembly is therefore requested for three ad litem judges at the D-2 level to enhance the capacity of the Dispute Tribunal during 2009. As with the other judge positions, candidates would be screened by the Internal Justice Council.

87. In addition, the approval of the General Assembly is requested for general temporary assistance resources corresponding to three P-3, three P-2, and three General Service (Other level) staff members to enhance the Registries of the Dispute Tribunal in New York, Geneva and Nairobi for one year in order to facilitate the processing and completion of the backlog of cases from the current system after 1 January 2009. This additional staffing is required for one year only, and would be dedicated exclusively to handling the backlog of cases inherited from the old system, estimated at approximately 130, to be distributed among the Registries in New York, Geneva and Nairobi. This would represent an increase of between 50 and 100 per cent in the normal workload. The following temporary staff, identified by Registry, are therefore required for the United Nations Dispute Tribunal Registries in New York, Geneva and Nairobi: three P-3, three P-2 and three General Service (Other

level). To handle the anticipated additional caseload transferred from the current system, the permanent staff of the Dispute Tribunal Registries would require a temporary augmentation to address the more than 45 additional cases that each would need to process and complete in 2009. The temporary professional staff (1 P-3 and 1 P-2 in each Registry in New York, Geneva and Nairobi) would support the Dispute Tribunal judges, including the ad litem judges, and the permanent Registry staff of those duty stations with legal research, analysis and drafting support, as needed, to complete the additional cases. The temporary General Service staff (1 General Service (Other level) in each Registry in New York, Geneva and Nairobi) would provide administrative and technical support (including maintaining case files, contacting the parties and potential witnesses and experts, as required, arranging travel and making other logistical arrangements) to the judges and legal staff of the Dispute Tribunal to facilitate the timely completion of the backlog of cases.

88. The temporary staffing requested is comparable to the posts and general temporary assistance resources already approved for the three Registries by the General Assembly in anticipation of a caseload substantially similar to those generated in the current system. Currently, the Joint Appeals Boards, the Joint Disciplinary Committees and the Disciplinary Committees receive approximately 130 new applications per year, with the majority being filed in New York. The backlog of cases from the old system represents a doubling of the caseload for the Dispute Tribunal Registries for 2009. As approved by the General Assembly in its resolution 62/228, 13 posts and 5 general temporary assistance positions are expected to handle the normal annual caseload of the Dispute Tribunal. The approved staffing of the Registries of the United Nations Dispute Tribunal from 1 January 2009 is as follows:

- New York: posts, one P-5, one P-2, two General Service (Other level); general temporary assistance positions, one P-4 Legal Officer, one P-4 information technology Officer and one General Service (Other level)
- Geneva: posts, one P-5, one P-3, two General Service (Other level); general temporary assistance position, one P-4
- Nairobi: posts, one P-5, one P-3, two General Service (Local level); general temporary assistance position, one P-4

89. The nine additional positions requested, as reflected in paragraph 87 above, would handle the equivalent of the annual workload of the system in backlog cases. This reflects the minimum resources needed to clear the backlog by the end of 2009.

90. Considerable thought went into finding the best option for dealing with the backlog of cases, including through consultation with the staff in the context of the contact group on administration of justice of the Staff-Management Coordination Committee. The backlog is towering, despite the extra efforts being exerted during the current year to handle the higher-than-normal number of cases. Other options discussed, such as continuing the Administrative Tribunal or transferring cases to the Appeals Tribunal, would also have necessitated the hiring of ad litem judges and temporary staff or the payment of honorariums, but would not have allowed for the clearing of the backlog within one year.

91. The redeployment of existing posts and use of the Registry staff of the United Nations Appeals Tribunal were considered. There are no existing posts that could be redeployed for the period required to clear the backlog of cases by the end of 2009

without having an impact on core functions in other departments. Equally, while it is anticipated that Registry staff of the Appeals Tribunal could be deployed to assist Registry staff of the Dispute Tribunal on a case-by-case basis to address the backlog, particularly in the first half of 2009, those staff members will also be responsible for assisting the Appeals Tribunal in becoming established, drafting its rules and undertaking its first cases. Thus, no accurate projection can be made of the percentage of time that those staff members could devote to helping to clear the cases from the current system.

92. The Secretary-General considers that the proposal outlined in the present section is the most efficient and effective in meeting needs and responding to the Redesign Panel's criticism of the long delays prevalent in the old system. It represents a one-time investment to ensure a smooth transition to the new system of administration of justice without hampering its ability to function as intended.

B. The final year of the United Nations Administrative Tribunal

93. While the proposals set out in paragraphs 83 to 92 above will better equip the Organization to handle the expected backlog of cases from the Administrative Tribunal, it is nevertheless imperative that every effort be exerted to finish as many cases as possible during the course of 2008. It is envisaged that an extra session of the Administrative Tribunal will be held in April, as endorsed by the General Assembly. However, in order to maximize output, the Tribunal will also have to consider an increase in the number of cases during its regular summer and fall sessions.

94. The members of the Tribunal have indicated their willingness to add to their regular workload if they were to receive remuneration. It has been estimated that, should they be remunerated for their work in 2008, they would be able to dispose of at least 90 cases (approximately 25 more cases than are normally disposed of), as such remuneration would allow the members — most of whom have professional obligations in addition to their Administrative Tribunal responsibilities — to prepare cases in between sessions.

95. The issue of the remuneration of the members of the Administrative Tribunal has been debated by the General Assembly for a number of years. As this will be the last year of the Administrative Tribunal, given that it is in the interests of the Organization to dispose of as many cases as possible, the Secretary-General reiterates his request that the General Assembly authorize the payment of an honorarium for all judgements rendered in 2008 at the suggested amounts of $1,000 per judgement drafted and $250 for participating in a panel and signing. Without it, the anticipated backlog at the end of 2008 would be in excess of 150 cases.

V. Financial implications

96. In its resolution 62/228, the General Assembly requested the Secretary-General to provide financial implications related to transitional arrangements for the new system of administration of justice. While certain transitional arrangements were approved and funded by the General Assembly in its resolutions 62/228 and 62/238, additional transitional measures are required for 2008-2009 to ensure that

the Organization shifts smoothly from the current internal justice system to the new system of administration of justice.

97. The estimated additional costs of $1,729,100 under the programme budget for the biennium 2008-2009 will clear the backlog of pending cases filed with the United Nations Administrative Tribunal prior to 1 January 2009. It should be noted that these estimated additional costs are non-recurrent in nature. The requirements as reflected in this report are summarized in the tables 1 and 2.

Table 1
Summary of requirements by budget section for the biennium 2008-2009
(Thousands of United States dollars)

Section	*Initial appropriation*	*Resource growth*	*Estimate*
1. Overall policymaking, direction and coordination	92 369.6	1 333.4	93 703.0
28D. Office of Central Support Services	267 161.3	178.7	267 340.0
28E. Administration, Geneva	111 218.5	26.1	111 244.6
28G. Administration, Nairobi	27 384.1	41.2	27 425.3
35. Staff assessment	463 437.9	149.7	463 587.6
Total	**961 571.4**	**1 729.1**	**963 300.5**

Table 2
Summary of requirements by object of expenditure for the biennium 2008-2009
(Thousands of United States dollars)

Object of expenditure	*Initial appropriation*	*Resource growth*	*Estimate*
Posts	229 852.6	—	241 930.5
Other staff costs	12 912.8	892.1[a]	14 361.6
Non-staff compensation	3 336.7	645.7	4 058.2
Consultants and experts	1 083.1	(25.3)	1 102.3
Travel of representatives	8 190.3	(146.1)	8 983.7
Travel of staff	4 644.0	(54.1)	4 866.1
Contractual services	40 490.9	(36.9)	42 741.9
General operating expenses	167 507.5	217.6	178 437.2
Hospitality	524.3	—	555.6
Supplies and materials	5 978.7	9.6	6 320.6
Furniture and equipment	9 143.7	76.8	9 672.3
Grants and contributions	14 468.9	—	15 243.9
Staff assessment	463 437.9	149.7	482 616.8
Total	**961 571.4**	**1 729.1**	**963 300.5**

[a] The amount relates to three positions (1 P-3, 1 P-2 and 1 General Service) for 12 months in each of the three United Nations Dispute Tribunal duty stations (New York, Geneva and Nairobi).

VI. Conclusion

98. The approval by the General Assembly of a new system for the administration of justice in the United Nations was a landmark decision, and one that promises to affect the Secretariat in profound ways. The new system should be viewed not in isolation, but as an integral part of the Secretary-General's quest for greater accountability in the Organization. He is convinced that the new system will contribute to better management, by heightening the sense of responsibility for decision-making.

99. In order to have the new system in place by 1 January 2009, the timetable is crucial. The Secretary-General considers that the statutes of the Dispute Tribunal and the Appeals Tribunal must be approved by the General Assembly at the second part of its resumed sixty-second session to ensure that judges of both Tribunals can be elected and appointed sufficiently in advance of 1 January 2009. The Secretary-General also considers it urgent and essential that the General Assembly decide on transitional measures. Owing to the surge in new cases and a large backlog, extraordinary temporary measures will be necessary to ensure that the new system is allowed to function unadulterated by remnants of the old system. Decisions on transitional measures are also required so that appropriate arrangements may be made to issue relevant administrative instructions.

100. Additional resource requirements in the amount of $1,729,100 for the biennium 2008-2009 might normally be considered to be potentially subject to the provisions governing the contingency fund in accordance with the terms of General Assembly resolutions 41/213 and 42/211. In this regard, it is recalled that the Assembly, in its resolution 61/254, approved a contingency fund for the biennium 2008-2009 in the amount of $31.5 million. The balance of the contingency fund following decisions taken by the Assembly at the main part of its sixty-second session amounts to $12,191,000. The balance notwithstanding, for the purposes of meeting the requirements set out in the present report, the Assembly may wish to proceed in the same manner as it did with respect to the initial requirements, approved in resolution 62/238, for the establishment of the new system of administration of justice, namely, through an appropriation for the biennium 2008-2009 without recourse to the contingency fund.

VII. Actions to be taken by the General Assembly

101. The General Assembly may wish to:

(a) Adopt the statutes of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, attached as annexes I and II to the present report;

(b) Approve the transitional measures of three ad litem judges, their travel and their related support staff for 2009, and the payment of remuneration to judges for the United Nations Administrative Tribunal for judgements made during the remainder of 2008 as outlined in the present report;

(c) Appropriate a total amount of $1,729,100 under the programme budget for the biennium 2008-2009, comprising increases under section 1,

Overall policymaking, direction and coordination ($1,333,400), section 28D, Office of Central Support Services ($178,700), section 28E, United Nations Office at Geneva ($26,100), section 28G, United Nations Office at Nairobi ($41,200); as well as an increase under section 35, Staff assessment ($149,700), to be offset by a corresponding amount under income section 1, Income from staff assessment.

Annex I

Draft statute of the United Nations Dispute Tribunal[a]

Article 1

A tribunal is established by the present statute to be known as the United Nations Dispute Tribunal.

Article 2

1. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided in article 3(1) of the present statute, against the United Nations, including separately administered United Nations funds and programmes:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the conditions of employment; or

(b) To appeal an administrative decision imposing a disciplinary measure.

2. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by a staff member requesting a suspension of action in respect of a contested administrative decision that is the subject of an ongoing management evaluation. The Dispute Tribunal's decision on such an application shall not be subject to appeal.

3. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by a staff association, as provided in article 3(3) of the present statute, against the United Nations or separately administered United Nations funds and programmes:

(a) To enforce the rights of staff associations, as recognized under the Staff Regulations and Rules;

(b) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the conditions of employment, on behalf of a group of named staff members who are entitled to file such application under article 2(1) of the present statute and who are affected by the same administrative decision arising out of the same facts; or

(c) To support an application filed by one or more staff members who are entitled to appeal the same administrative decision under article 2(1)(a) of the present statute, by means of the submission of a friend-of-the-court brief or by intervention.

4. In the event of a dispute as to whether the Dispute Tribunal has competence under the present statute, the Tribunal shall decide on the matter.

5. As a transitional measure, the Dispute Tribunal shall have jurisdiction over: (a) a case transferred to it on 1 January 2009 from a joint appeals board or a joint disciplinary committee established by the United Nations or from another similar body established by a separately administered fund or programme, and (b) an application filed with the United Nations Administrative Tribunal before 1 January

[a] Previously issued in document A/62/748 and Corr.1.

2009, that has not been reviewed by the Administrative Tribunal as of 31 December 2008.

Article 3

1. An application under article 2(1) of the present statute may be filed by:

(a) Any staff member of the United Nations, including of the United Nations Secretariat or separately administered United Nations funds and programmes;

(b) Any former staff member of the United Nations, including of the United Nations Secretariat or separately administered United Nations funds and programmes;

(c) Any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including of the United Nations Secretariat or separately administered United Nations funds and programmes;

(d) Any person performing work by way of his or her own personal service for the United Nations Secretariat or separately administered United Nations funds and programmes, no matter the type of contract by which he or she is engaged, with the exception of persons in the following categories:

(i) Military or police personnel in peacekeeping operations;

(ii) Volunteers (other than United Nations Volunteers);

(iii) Interns;

(iv) Type II gratis personnel (personnel provided to the United Nations by a Government or other entity responsible for the remuneration of the services of such personnel and who do not serve under any other established regime); or

(v) Persons performing work in conjunction with the supply of goods or services extending beyond their own personal service or pursuant to a contract entered into with a supplier, contractor or consulting firm.

2. A request for a suspension of action under article 2(2) of the present statute may be filed by a staff member of the United Nations, including of the United Nations Secretariat or separately administered United Nations funds and programmes.

3. An application under article 2(3) of the present statute may be filed by a staff association recognized under United Nations staff regulation 8.1 (b).

Article 4

1. The Dispute Tribunal shall be composed of three full-time judges and two half-time judges.

2. The judges shall be appointed by the General Assembly from a list of candidates compiled by the Internal Justice Council established pursuant to General Assembly resolution 62/228. No two judges shall be of the same nationality. Due consideration shall be given to gender and regional balance.

3. To be eligible for appointment as a judge, a person shall:

(a) Be of high moral character; and

(b) Possess at least 10 years of judicial experience in the field of administrative law, or the equivalent within one or more national jurisdictions.

4. A judge of the Dispute Tribunal shall be appointed for one non-renewable term of seven years. As a transitional measure, two of the judges (one full-time judge and one half-time judge) initially appointed, to be determined by drawing of lots, shall serve three years and may be reappointed to the same Dispute Tribunal for a further non-renewable term of seven years.

5. A judge of the Dispute Tribunal appointed to replace a judge whose term of office has not expired shall hold office for the remainder of his or her predecessor's term, and may be reappointed for one non-renewable term of seven years.

6. A former judge of the Dispute Tribunal shall not be eligible for any subsequent appointment within the United Nations, except another judicial post.

7. The Dispute Tribunal shall elect a President.

8. A judge of the Dispute Tribunal shall serve in his or her personal capacity and enjoy full independence.

9. A judge of the Dispute Tribunal who has a conflict of interest in a case shall recuse himself or herself.

10. A judge of the Dispute Tribunal may only be removed by the General Assembly on grounds of proven misconduct or incapacity.

11. A judge of the Dispute Tribunal may resign, by notifying the General Assembly through the Secretary-General.

Article 5

The three full-time judges of the Dispute Tribunal shall normally perform their functions in New York, Geneva and Nairobi, respectively. The Dispute Tribunal may decide to hold sessions in other duty stations, as required by the caseload.

Article 6

1. The Secretary-General of the United Nations shall make the administrative arrangements necessary for the functioning of the Dispute Tribunal.

2. The Registries of the Dispute Tribunal shall be established in New York, Geneva and Nairobi, each consisting of a Registrar and such other staff, as necessary.

3. The expenses of the Dispute Tribunal shall be borne by the United Nations.

4. Compensation ordered by the Dispute Tribunal shall be paid by the United Nations Secretariat or separately administered United Nations funds and programmes, as applicable and appropriate, or by the specialized agency, organization or entity that has accepted the jurisdiction of the Dispute Tribunal.

Article 7

1. Subject to the provisions of the present statute, the Dispute Tribunal shall establish its own rules.

2. The rules shall include provisions concerning:

(a) Organization of work;

(b) Presentation of submissions and the procedure to be followed in respect thereto;

(c) Procedures for maintaining the confidentiality and inadmissibility of verbal or written statements made during the mediation process;

(d) Intervention by persons not party to the case whose rights may be affected by the judgement;

(e) Oral hearings;

(f) Publication of judgements; and

(g) Other matters relating to the functioning of the Dispute Tribunal.

Article 8

1. An application shall be receivable if:

(a) The Dispute Tribunal is competent to hear and pass judgement on the application, pursuant to article 2 of the present statute;

(b) An applicant is eligible to file an application, pursuant to article 3 of the present statute;

(c) An applicant has previously submitted the contested administrative decision for management evaluation, where required;

(d) Unless the Dispute Tribunal has suspended or waived the deadline, the application is filed within the following applicable deadline:

(i) In cases where a request for a management evaluation is required, the application must be filed:

a. Within 30 days of the applicant's receipt of the response to the management evaluation; or

b. Within 30 days from the expiry of the 45-day response period, if no response to the management evaluation was provided;

(ii) In cases where a request for a management evaluation is not required, the application must be filed within 30 days of the notification of the applicant's receipt of the administrative decision.

2. An application shall not be receivable if the dispute arising from contested administrative decision had been resolved by an agreement reached through mediation. However, an applicant may file an application to enforce the implementation of an agreement reached through mediation, which shall be receivable if the agreement has not been implemented in a timely manner or in accordance with the agreement.

3. The Dispute Tribunal may decide to suspend or waive the deadlines in any case.

4. The filing of an application shall not have the effect of suspending the execution of the contested administrative decision.

5. An application and other submissions shall be filed in any of the official languages of the United Nations.

6. As a transitional measure, a case transferred on 1 January 2009 pursuant to article 2 (5) of the present statute must also satisfy deadlines for transitional measures applicable to such cases to be provided separately by an administrative issuance.

Article 9

1. The Dispute Tribunal may order production of documents or such other evidence as it deems necessary.

2. The Dispute Tribunal shall decide whether the personal appearance of the applicant is required at oral proceedings and the appropriate means for satisfying the requirement of personal appearance.

3. The oral proceedings of the Dispute Tribunal shall be held in public unless the Dispute Tribunal decides, at its own initiative or at the request of either party, that circumstances require the proceedings to be closed.

Article 10

1. The Dispute Tribunal shall suspend proceedings in a case, at the request of both parties to the application.

2. At any time during its deliberations, the Dispute Tribunal may order the following measures, which are final and without appeal:

(a) An interim order to provide temporary relief to either party, including a suspension of action of the contested administrative decision; and

(b) Referral of a case for mediation.

3. Prior to a determination of the merits of a case, should the Dispute Tribunal find that a relevant procedure prescribed in the Staff Regulations and Rules or applicable administrative issuances has not been observed, the Dispute Tribunal may remand the case for institution or correction of the required procedure. In such cases, the Dispute Tribunal may order the payment of compensation for procedural delay, which is not to exceed the equivalent of three months' net base salary.

4. Where the Dispute Tribunal determines that an application is well founded, it may order one or more of the following:

(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered;

(b) Compensation, which shall not normally exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, order the payment of a higher indemnity in exceptional cases and shall provide the reasons for that decision;

(c) Interest; or

(d) Costs.

5. Where the Dispute Tribunal determines that a party has manifestly abused the proceedings before the Tribunal, it may award costs against that party.

6. The Dispute Tribunal may not award exemplary or punitive damages.

7. The Dispute Tribunal may refer appropriate cases to the Secretary-General or executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability.

8. Judgements by the Dispute Tribunal shall normally be rendered by a single judge. The Dispute Tribunal may decide to refer a case to a panel of three judges to render a judgement.

Article 11

1. The judgements of the Dispute Tribunal shall be issued in writing and shall state the reasons on which they are based.

2. The deliberations of the Dispute Tribunal shall be confidential.

3. The judgements of the Dispute Tribunal shall be binding upon the parties.

4. The judgements of the Dispute Tribunal shall be drawn up in any of the six official languages of the United Nations, in two originals, which shall be deposited in the archives of the United Nations.

5. A copy of the Dispute Tribunal's judgements shall be communicated to each party in the case.

6. The judgements of the Dispute Tribunal shall be published and made generally available by the Registry of the Tribunal.

Article 12

1. Either party may apply to the Dispute Tribunal for a revision of a judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was issued, unknown to the Dispute Tribunal and to the party claiming revision, provided that such ignorance was not due to negligence. The application must be made within one year of the date of the judgement.

2. Clerical or arithmetical mistakes may at any time be corrected by the Dispute Tribunal either on its own motion or on the application of any of the parties.

3. Either party may apply to the Dispute Tribunal for interpretation or an order for execution of a judgement.

Article 13

The present statute may be amended by decision of the General Assembly.

Annex II

Draft statute of the United Nations Appeals Tribunal[a]

Article 1

A Tribunal is established by the present statute to be known as the United Nations Appeals Tribunal.

Article 2

1. The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal, in which it is asserted that the Dispute Tribunal has:

(a) Exceeded its jurisdiction or competence;

(b) Failed to exercise jurisdiction vested in it;

(c) Committed a fundamental error in procedure that has occasioned a failure of justice;

(d) Erred on a question of law; or

(e) Erred on a question of material fact.

2. An appeal may be filed by either party (i.e. the applicant or the respondent) to a judgement of the Dispute Tribunal, or by the successor of such party.

3. The Appeals Tribunal shall decide upon its own competence.

4. The Appeals Tribunal shall be competent to hear and pass judgement upon an application alleging non-observance of the regulations of the United Nations Joint Staff Pension Fund arising out of the decision of the United Nations Joint Staff Pension Board submitted by:

(a) Any staff member of a member organization of the Pension Fund which has accepted the jurisdiction of the Appeals Tribunal in Pension Fund cases who is eligible under article 21 of the regulations of the Fund as a participant in the Fund, even if his or her employment has ceased, and any person who has acceded to such staff member's rights upon his or her death;

(b) Any other person who can show that he or she is entitled to rights under the regulations of the Pension Fund by virtue of the participation in the Fund of a staff member of such member organization.

5. The Appeals Tribunal shall be competent to hear and pass judgement on an application filed against a specialized agency brought into relationship with the United Nations in accordance with the provisions of Articles 57 and 63 of the Charter of the United Nations or other international organization or entity established by a treaty and participating in the common system of conditions of service, where a special agreement has been concluded between the agency, organization or entity concerned and the Secretary-General of the United Nations to establish the terms of the Appeals Tribunal's jurisdiction. Such special agreement shall provide that the agency, organization or entity concerned shall be bound by the

[a] Previously issued in document A/62/748 and Corr.1.

judgements of the Appeals Tribunal and be responsible for the payment of any compensation awarded by the Appeals Tribunal in respect of its own staff members and shall include, inter alia, provisions concerning its participation in the administrative arrangements for the functioning of the Appeals Tribunal and concerning its sharing of the expenses of the Appeals Tribunal.

Article 3

1. The Appeals Tribunal shall be composed of seven judges.

2. The judges of the Appeals Tribunal shall be appointed by the General Assembly from a list of candidates compiled by the Internal Justice Council established pursuant to General Assembly resolution 62/228. No two judges shall be of the same nationality. Due consideration shall be given to gender and regional balance.

3. To be eligible for appointment as a judge, a person shall:

(a) Be of high moral character; and

(b) Possess at least 15 years of judicial experience in the field of administrative law, or the equivalent within one or more national jurisdictions.

4. A judge of the Appeals Tribunal shall be appointed for one non-renewable term of seven years. As a transitional measure, three of the judges initially appointed, to be determined by drawing of lots, shall serve three years and may be reappointed to the same Appeals Tribunal for a further non-renewable term of seven years.

5. A judge of the Appeals Tribunal appointed to replace a judge whose term of office has not expired shall hold office for the remainder of his or her predecessor's term, and may be reappointed for one non-renewable term of seven years.

6. A judge of the Appeals Tribunal shall not be eligible for any appointment within the United Nations, except another judicial post.

7. The Appeals Tribunal shall elect a President and two Vice-Presidents.

8. A judge of the Appeals Tribunal shall serve in his or her personal capacity and enjoy full independence.

9. A judge of the Appeals Tribunal who has a conflict of interest in a case shall recuse himself or herself.

10. A judge of the Appeals Tribunal may only be removed by the General Assembly on grounds of proven misconduct or incapacity.

11. A judge of the Appeals Tribunal may resign, by notifying the General Assembly through the Secretary-General.

Article 4

1. The Appeals Tribunal shall hold ordinary sessions at dates to be fixed by its rules, subject to the determination of the President that there is a sufficient number of cases to justify holding the session.

2. Extraordinary sessions may be convoked by the President, as required by the caseload.

Article 5

1. The Secretary-General shall make the administrative arrangements necessary for the functioning of the Appeals Tribunal.

2. The Registry of the Appeals Tribunal shall be established in New York, consisting of a Registrar and such other staff, as necessary.

3. The expenses of the Appeals Tribunal shall be borne by the United Nations.

4. Compensation ordered by the Appeals Tribunal shall be paid by the United Nations Secretariat or separately administered United Nations funds and programmes as applicable and appropriate, or by the specialized agency, organization or entity that has accepted the jurisdiction of the Appeals Tribunal.

Article 6

1. Subject to the provisions of the present statute, the Appeals Tribunal shall establish its rules.

2. The rules shall include provisions concerning:

(a) Election of the President and Vice-Presidents;

(b) Composition of the Tribunal for its sessions;

(c) Organization of work;

(d) Presentation of submissions and the procedure to be followed in respect thereto;

(e) Procedures for maintaining the confidentiality and inadmissibility of verbal or written statements made during the mediation process;

(f) Intervention by persons not party to the case whose rights may be affected by the judgement;

(g) Oral hearings;

(h) Publication of judgements; and

(i) Other matters relating to the functioning of the Tribunal.

Article 7

1. An appeal shall be receivable if:

(a) The Appeals Tribunal is competent to hear and pass judgement on the appeal, pursuant to article 2(1) of the present statute;

(b) The appellant is eligible to file the appeal, pursuant to article 2(2) of the present statute; and

(c) The appeal is filed within forty-five days of receipt of the judgement of the Dispute Tribunal, or the Appeals Tribunal has suspended or waived the deadline.

2. For purposes of applications alleging non-observance of the regulations of the United Nations Joint Staff Pension Fund arising out of a decision of the United Nations Joint Staff Pension Board, an application shall be receivable if filed within ninety days from the receipt of the Board's decision.

3. The Appeals Tribunal may decide to suspend or waive the deadlines in any case.

4. The filing of appeals shall not have the effect of suspending the execution of the judgement contested.

5. An appeal and other submissions shall be filed in one of the official languages of the United Nations.

Article 8

1. The Appeals Tribunal may order production of documents or such other evidence as it deems necessary.

2. The Appeals Tribunal shall decide whether the personal appearance of the appellant is required at oral proceedings and the appropriate means for satisfying the requirement of personal appearance.

3. The judges assigned to a case will determine whether to hold oral hearings.

4. The oral proceedings of the Appeals Tribunal shall be held in public unless the Appeals Tribunal decides at its own initiative or at the request of either party, that circumstances require the proceedings to be closed.

Article 9

1. The Appeals Tribunal may order, inter alia, the following:

   (a) Rescission of the contested decision;

   (b) Specific performance;

   (c) Compensation;

   (d) Interest; and

   (e) Costs.

2. Where the Appeals Tribunal determines that a party has manifestly abused the appeals process, it may award costs against that party.

3. The Appeals Tribunal may not award exemplary or punitive damages.

4. The Appeals Tribunal may order interim measures and/or injunctive relief.

5. The Appeals Tribunal may remand a case to the Dispute Tribunal and decide to award payment in connection with its decision to remand due to procedural delay, which is not to exceed the equivalent of three months' net base salary.

6. The Appeals Tribunal may refer appropriate cases to the Secretary-General or executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability.

Article 10

1. Cases before the Appeals Tribunal shall normally be reviewed by a panel of three judges and decided by a majority vote.

2. Where the President or any two judges sitting in a particular case consider that the case raises a significant question of law, at any time before judgement is

rendered, the case may be referred for consideration by the whole Tribunal. Quorum in such cases shall be five judges.

3. The judgements of the Appeals Tribunal shall be issued in writing and shall state the reasons on which they are based.

4. The deliberations of the Appeals Tribunal shall be confidential.

5. The judgements of the Appeals Tribunal shall be binding upon the parties.

6. The judgements of the Appeals Tribunal shall be final and without appeal, subject to the provisions of article 11 of the present statute.

7. The judgements of the Appeals Tribunal shall be drawn up, in any of the official languages of the United Nations, in two originals, which shall be deposited in the archives of the United Nations.

8. A copy of the judgement shall be communicated to each party to the case.

9. The judgements of the Appeals Tribunal shall be published and made generally available by the Registry of the Tribunal.

Article 11

1. Either party may apply to the Appeals Tribunal for a revision of a judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was issued, unknown to the Appeals Tribunal and to the party claiming revision, provided that such ignorance was not due to negligence. The application must be made within one year of the date of the judgement.

2. Clerical or arithmetical mistakes may at any time be corrected by the Appeals Tribunal either on its own motion or on the application of any of the parties.

3. Either party may apply to the Appeals Tribunal for interpretation or an order for execution of a judgement.

Article 12

The present statute may be amended by decision of the General Assembly.